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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,008	08/24/2000	Carlos Ernesto Koster	ASA-101	5469

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EXAMINER

CHORBAJI, MONZER R

ART UNIT PAPER NUMBER

1744

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/623,008	Applicant(s) KOSTER, CARLOS ERNESTO	
	Examiner MONZER R. CHORBAJI	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final action is in response to the communication received on 05/23/2005

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks et al (U.S.P.N. 5,300,265) in view of Fiorenzano, Jr. (U.S.P.N. 5,326,543).

With respect to claims 1, 3, and 5, the Banks reference discloses a method for the treatment of goods with carbon dioxide and nitrogen (col.1, lines 44-46 and col.5, lines 36-40) at a location of goods (col.5, lines 53-55) by washing (col.1, lines 54-56), filtering (figure 1, 12 and 13), cooling (figure 1, 7 or 9 or 10), and catalyzing of other gas sources (figure 1, 3 and 5). The Banks reference teaches (col.4, lines 62-68) that the exhaust of any combustion engine can be used to supply an exhaust gas containing N₂, CO, NOX, inert gases and small amounts of uncombusted O₂. Further, the Banks

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reference teaches (col.4, lines 65-66) that combustion engine is a source of mechanical power, i.e., providing motion to a car or a boat. However, the Banks reference fails to disclose explicitly the use of the exhaust of ships or boilers. The Fiorenzano reference discloses the use of nitrogen and carbon dioxide gases to treat goods located in ships (col.1, lines 14-15 and lines 43-47). Furthermore, the Fiorenzano reference does not specify any type of ship such that ships that utilize motive power are included.

However, a boiler is an integral part of a motive power. Thus, a person having ordinary skill in the art of treating goods would have been motivated to utilize the teachings of the Banks reference to the Fiorenzano reference so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, Jr., col.1, lines (16-18).

Response to Arguments

4. Applicant's arguments filed on 05/23/2005 have been fully considered but they are not persuasive.

On page 5 of the Remarks section, applicant argues that, "But, Banks does not teach using an internal combustion engine which is a primary engine for moving cars, boats or the like to supply the gases necessary for fumigation. This teaching is supplied entirely by the examiner without reference to a teaching in the art." The examiner disagrees. The Banks reference teaches (col.4, lines 62-68) that the exhaust of any combustion engine can be used to supply an exhaust gas containing N₂, CO, NOX, inert gases and small amounts of uncombusted O₂. Further, the Banks reference teaches (col.4, lines 65-66) that combustion engine is a source of mechanical power, i.e., providing motion to a car or a boat. One of the inherent meanings of the term

Combustion engines is, for example, car engine, which is the primary engine for moving the car. Also, the term inherently means a ship engine, which is the primary engine for moving the ship.

On page 5 of the Remarks section, applicant argues that, "But Fiorenzano does not teach or suggest utilizing the exhaust gases from a ship's boiler, i.e., the gases of the primary source of motive power for a transportation vessel, as required by claims 1 and 5 or primary energy source of a boiler as required by claim 3 for fumigation." As explained above, the Banks reference teaches (col.4, lines 65-66) that combustion engine is a source of mechanical power, i.e., providing motion to a car or a boat. One of the inherent meanings of the term Combustion engines is, for example, car engine, which is the primary engine for moving the car. Also, the term inherently means a ship engine, which is the primary engine for moving the ship. In addition, one of the meanings of motive power is a motor such that steam is used to impart motion to machinery, i.e., a steam engine where the boiler provides steam under pressure. Further, the Fiorenzano reference discloses the use of nitrogen and carbon dioxide gases to treat goods located in ships (col.1, lines 14-15 and lines 43-47). As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of the Banks reference to the Fiorenzano reference by using the exhaust gases of the primary engine of the ship as taught by the Banks reference so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, Jr., col.1, lines (16-18)).

On page 7 of the Remarks section, applicant argues that, "the Examiner admits that Banks does not teach or suggest use of gases from a primary motive force of a vessel, but that the Examiner has merely deemed Banks to be equivalent to the teachings of the present invention." The examiner disagrees, since the Banks reference does not explicitly teach what the power or energy produced by the primary engine is used for. This is not an admission by the examiner. As explained above, the Banks reference teaches (col.4, lines 65-66) that combustion engine is a source of mechanical power, i.e., providing motion to a car or a boat. One of the inherent meanings of the term Combustion engines is, for example, car engine, which is the primary engine for moving the car. Also, the term inherently means a ship engine, which is the primary engine for moving the ship. Thus, the Banks reference does teach using the exhaust of any primary combustion engine.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN KIM can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji *MRC*
Patent Examiner
AU 1744
07/26/2005

John Kim
JOHN KIM
SUPERVISORY PATENT EXAMINER